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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 183

HENRY WATSON,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

Supreme Court of the United States

October Term, 1963

No.

HENRY WATSON,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Henry Watson, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered against him in the above-entitled case on May 15, 1964.

A. The Opinion Below

The opinion of the Court of Appeals in this case has not as yet been officially reported. It is set forth in Appendix A annexed to this petition.

B. Jurisdiction

The judgment of the Court of Appeals was entered on May 15, 1964.

On the 27 day of May, 1964, a stay of the mandate was applied for in the Second Circuit Court of Appeals. The jurisdiction of this Court is invoked under Rule 19 of the Supreme Court Rules and Title 28, United States Code, Section 1254(1) on the ground that review by the Supreme Court by writ of certiorari is sought of a judgment of affirmance on appeal by the United States Court of Appeals for the Second Circuit.

C. Questions Presented

Petitioner, Henry Watson, specifically adopts Points One-Five cited by co-petitioner, Robert Williams, and in addition, questions:

6. Whether a three hour stay in Williams' apartment constituted a trespass so as to vitiate any observations by Federal Narcotics Agents made therefrom?

7. Whether a post-arrest statement taken from co-defendant and co-petitioner Robert Williams was sufficient under *Wong Sun* v. *United States*, 371 U.S. 471 to justify a warrantless arrest of petitioner, Henry Watson?

8. Whether the warrantless arrests of eleven people clearly established an unconstitutional pattern which cannot be condoned.

D. United States Constitution and Statutes

The statutes involved are: United States Code, Title 18, Section 2109; United States Code, Title 21, Sections 173, 174, United States Code, Title 26, Section 7607 and the United States Constitution, Fourth Amendment

E. Summary Statement of Matters Involved

A two count indictment was returned against the petitioner and the co-defendant and co-petitioner, Rober Williams, charging the crime of possession of narcotic drugs in violation of Title 21, Sections 173, 174.

A pre-trial motion to suppress on behalf of both petitioners was held on April 25, and 30, 1963, before Honorable Thomas F. Croake, United States District Judge Southern District of New York, and a nineteen page opinion was filed on July 8, 1963 and reported 219 F. Supp. 666. This opinion is being forwarded in the Government's appendix, Pages 46a to 60a and attached to the Petition and Motion of Robert Williams filed simultaneously herewith.

The petitioner was then tried along with co-defendant and co-petitioner, Robert Williams and was found guilty before Honorable Archie O. Dawson and jury on October 25, 1963. The petitioner was sentenced to five years imprisonment and has been enlarged on bail pending appeal in the sum of $10,000.00.

On Appeal to the United States Court of Appeals for the Second Circuit, conviction of the petitioner as well as that of co-defendant and co-petitioner, Robert Williams, was affirmed.

F. Reasons for Granting Writ

The petitioner, Henry Watson, wishes to incorporate Points One-Five raised by co-petitioner Robert Williams in his petition for a writ of certiorari filed simultaneously herewith and arising from a judgment of the United States Court of Appeals, Second Circuit, entitled *U. S.* v. *Watson, et al.* decided May 15 1964.

The petitioner, Henry Watson, further sets forth the following reasons:

SIX

A three hour stay in the apartment of co-petitioner, Robert Williams, without his permission and after a search and arrest had been made, was clearly a trespass and any observations made therefrom would be illegal. *McDonald* v. *U. S.*, 335 U.S. 451.

This Court has never decided how long a search may continue and when, if ever, do the searchers become trespassers.

We have an extended period of time when agents remained without consent in a private dwelling. They detained more than eleven people during this period of time.

Certiorari should be granted to emphasize this Court's regard for lawful approaches to the enforcement of the criminal law.

SEVEN

A post arrest statement from a co-defendant is not sufficient to establish probable cause for the arrest of another co-defendant.

Three narcotic agents testified in the above-entitled matter and were in agreement that the arrest of petitioner Henry Watson was based completely upon a post-arrest

statement given to them by co-defendant and co-petitioner Robert Williams.

Judge Croake based his decision, denying the motion to suppress, on a belief that Robert Williams was attempting to "curry favor with his captors."

Judge Croake also felt that, since Watson was not actually within the apartment at the time of arrest, he had no standing to suppress any statements taken from Robert Williams.

Judge Croake stated that Williams' statement was: "corroborated by the facts that the agents had observed, namely, the operation of an active narcotics sales business in the apartment, and the further fact that only ten packs of the drug were left at the time of the initial search."

For this corroboration to become the basis for a warrantless arrest would completely negate the established principles that this Court has set down in *Draper* v. *U. S.*, 358 U.S. 307 and *Wong Sun* v. *U. S.*, 371 U.S. 471.

Certiorari should be granted to eliminate any possible conflict in the interpretation of the law between this case and the *Wong Sun* and *Draper* cases.

The question of who had standing to suppress physical evidence was decided in *Jones* v. *U.S.*, 362 U.S. 257. This was prior to the *Wong Sun* decision. Because of *Wong Sun* v. *U. S.* (*supra*) the defendant is now attempting to suppress statements illegally obtained. We have no clear guide as to who would have "standing" regarding oral statements distinguished from physical evidence.

EIGHT

The warrantless arrests in this case cannot be condoned and should be carefully reviewed.

After the arrest of Williams and before the arrest of Watson, eleven people knocked at the apartment door. All of them were admittedly taken into the apartment by the agents and detained until the agents had completed the arrests, seized the evidence and left the apartment. The detention in each instance was for a period of from a few minutes to a few hours.

This court has said in *Henry* v. *U. S.*, 361 U.S. 98 that any detention is actually an arrest. In Part 1 of this Court's opinion, in *Ker* v. *California*, the Court stated that

> "it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental—i.e. constitutional—criteria established by this Court have been respected."

The record is clear that this attempt to violate constitutional protection requires review from this Court to emphasize its desire to protect innocent people and to establish the need for obtaining warrants within the scope prescribed by the United States Constitution, notwithstanding the conflict interposed by Title 26, United States Code, Section 7607.

CONCLUSION

The petition for certiorari should be granted and this Court in the exercise of its power should order the judgment of conviction of the petitioner reversed and direct the dismissal of the indictment.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 429—September Term, 1963.

(Argued April 20, 1964 Decided May 15, 1964.)

Docket No. 28741

UNITED STATES OF AMERICA,

Appellee,

—v.—

ROBERT WILLIAMS and HENRY WATSON,

Appellants.

Before:

MOORE, KAUFMAN and MARSHALL,

Circuit Judges.

Appeal from judgments of conviction for the unlawful possession of narcotics, 21 U. S. C. §§173 and 174, after a trial by jury before Dawson, *J.*, in the United States District Court for the Southern District of New York. Appellants also challenge an order of the United States District Court for the Southern District of New York, Croake, *J.*, denying their pre-trial motions to suppress narcotics which were allegedly seized in the course of an illegal search. See 219 F. Supp. 666 (S. D. N. Y. 1963).

Affirmed.

R. HARCOURT DODDS, Assistant United States Attorney for the Southern District of New York, New York, N. Y. (Robert M. Morgenthau, United States Attorney, and Martin R. Gold, Assistant United States Attorney, of counsel), *for appellee.*

JOSEPH I. STONE, of Stone & Diller, New York, N. Y., *for appellants.*

PER CURIAM:

Convicted of unlawfully possessing narcotics, appellants Robert Williams and Henry Watson contend on appeal that Judge Croake improperly denied their pre-trial motions to suppress heroin seized in the course of an allegedly illegal search. We entirely agree with Judge Croake's determination, reported at 219 F. Supp. 666 (S. D. N. Y. 1963), that the search was incident to a lawful arrest, and we accordingly affirm the convictions.

As the relevant facts are fully and fairly set forth in Judge Croake's opinion, they will not be repeated here. It is sufficient to say that 26 U. S. C. §7607 empowers a narcotics officer to make arrests without a warrant for violations of the narcotics laws when he has "reasonable grounds to believe that the person to be arrested has committed or is committing such violation." As we recently reemphasized in *United States* v. *Wai Lau*, 329 F. 2d 310 (2d Cir. 1964), "what constitutes reasonableness must depend upon the specific facts presented in each case." And as is more than clear from Judge Croake's opinion, the specific facts presented here plainly provided such reasonable grounds.

The other objections raised by appellants are without merit. Thus, they contend that at trial, Judge Dawson permitted the prosecution to introduce the narcotics after the government had inadvertently closed its case; allowed the prosecution to post a few additional questions to a government witness after direct examination had been completed but before cross-examination had commenced; and denied Watson's motion for a severance. Since decisions of this sort are well within the Trial Judge's discretion and since appellants have been able to point to no resulting prejudice, their contentions in this regard border on the frivolous.

The judgments of conviction are affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

63 Cr. 82

Southern District of New York

to

Second Circuit

Cr. 28741

UNITED STATES OF AMERICA,

Appellee,

vs.

ROBERT WILLIAMS and HENRY WATSON,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR DEFENDANTS-APPELLANTS ROBERT WILLIAMS AND HENRY WATSON

EXCERPTS FROM TESTIMONY

Appendix B—Excerpts from Testimony

JOHN F. KREPPEIN, called as a witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Jacobs:

(28R)

Q. You were detaining all these people in the apartment? A. Yes, sir.

(29R)

Q. What did Williams say to you on this occasion and what did you say to Williams? A. Well, I told—we had a conversation, it was general, I don't really recall, but in essence I explained the futility of the situation to him, the fact that we were there, had found the narcotics, and after some explanation he agreed to—no, he said, "Well, you don't want me," he said, "you want my connection."

Mr. Stone: I object. Move this be stricken, and respectfully request for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion is denied. Go ahead.

(37R)

The Court: You may cross-examine the witness.

Cross Examination by Mr. Stone:

Q. Agent Kreppein, did you write any reports concerning the investigation December 17th and December 18th? A. Yes, sir, I did.

Q. Did you testify concerning this case before a grand jury? A. I did, yes, sir.

(47R)

Direct Examination by Mr. Jacobs (continued):

Q. Agent Kreppein, when you were in the apartment, apartment 2-E, 141 West 116th Street, on the evening of December 17th, did you have occasion to search the defendant Williams? A. I did.

Q. What if anything did you find on his person?

Mr. Stone: I object. I believe the cross-examination of this witness has already begun.

The Court: I don't think cross-examination started.

Cross Examination by Mr. Stone:

(50-51R)

Q. You testified yesterday, did you not, that from eleven o'clock in the evening of December 17th until approximately one a.m. on December 18th, eleven people came to the apartment before the defendant Watson arrived, is that correct? A. That is correct.

Q. You detained each and every one of these people, is that correct? A. That is correct.

(55-57R)

Q. You testified yesterday of a certain description that Mr. Williams gave you concerning Ray, didn't you? A. I did.

Q. Will you repeat that description for us today. A. Medium height, stocky build, medium brown complexion, moon-faced, and I said I couldn't recall whether it was round-faced or moon-shaped face.

Q. You wrote a report in this case, did you not? A. I did.

Appendix B—Excerpts from Testimony

Q. I show you Government's Exhibit 7 for identification and ask you if this is your report. A. It is, yes, sir.

Q. I ask you to please look at paragraph 11 of that report. I ask you if paragraph 11 contains a description purportedly given to you by the defendant Williams. A. It does, yes, sir.

Q. Does this description, any place, attribute to the person Ray as having a round face or moon face? A. No, it doesn't, not in that particular paragraph.

The Court: Is it in any other paragraph?

The Witness: I am checking now, your Honor. No, sir, it does not.

Q. When was that report written? A. December 18, 1962.

Q. That was the day of the arrest, is that correct? A. Yes, that is correct.

Q. And your memory was very fresh then, was it not? A. Yes, it was.

Q. I ask you do you remember testifying before the grand jury? A. Very, very hazily, sir.

Q. I ask you if you remember this question and this answer, page 4:

"Q. What did he tell you about his connection? A. He stated that his connection was only known to him by the name Ray and he was a Negro male of medium height, brown complexion and heavy built."

Do you remember that question and that answer? A. If it is in the minutes, I must have stated it. I couldn't honestly say.

Q. Is there any mention in the grand jury concerning the fact that the defendant Watson had a round or a moon face? A. If there is no other mention, there wouldn't be.

Q. That was on January 18, 1963, is that correct? A. Most likely, yes, sir.

(65R)

Q. When you come back again at ten o'clock that evening what, if anything, did you have with you? A. A two-by-four.

Q. Where did you get that? A. From the roof, sir.

(66R)

Q. When you came back at ten o'clock did you go directly to the roof to get there? A. When we—at both times we entered the building, entered a building down the street and crossed over the rooftops and came down.

(81R)

Q. I see. Well, had you asked him whether he was addicted? A. Yes.

Q. What did he say? A. He was.

(90R)

Q. Agent Kreppein, you testified, did you not, that you went through the roof of this building? A. Yes.

The Court: He entered the building through the roof.

Q. Did you break any part of that roof? A. No.

Q. The roof was open? A. There is a door. You go through the door and down the stairs.

Q. You opened this door, is that correct? A. Yes.

Q. Was there a key or a latch on this door? A. No.

Q. Anybody on the roof or anybody that controlled this apartment give you permission to enter through this roof? A. No, sir.

ERNEST A. HARIDOPOLOS, called as a witness on behalf of the government, being first duly sworn, testified as follows:

Direct Examination by Mr. Jacobs:

(100-101R)

Q. When Agent Kreppein put the board in the door, what occurred? A. The door was attempted to be closed, so three of us—

Q. Please keep your voice up. A. The door being attempted to be closed, so three of us went right to the door, broken the latch, the chain that was holding the door, and entered the apartment.

Q. When Agent Kreppein announced that he was—did he say that he was narcotic agent? A. A federal agent.

Q. —there to arrest anyone? A. Yes.

Q. Did he mention the person he was there to arrest? A. Robert Williams.

Q. Who went into the apartment first when the door gave way? A. Agent Kreppein.

Q. Who was second? A. I was.

Q. And Agent Heer was behind you? A. Yes.

Q. When you came into the apartment did you see the defendant Robert Williams? A. Not immediately, no.

Q. How long after you arrived in the apartment did you see Williams? A. Just—a few moments, about thirty seconds, forty second, maybe a minute.

Appendix B—Excerpts from Testimony

Cross Examination by Mr. Lenefsky:

(116-117R)

Q. Had you intended, when you were on the roof, about to go down to the building where apartment 2-E was—had you intended to gain entrance into that apartment at that time? A. If we could, we would.

Q. That was the reason you took the two-by-four plank, was it not? A. Yes.

Q. Where did you find that plank? A. I believe it was on the roof?

Q. Who picked it up? A. Agent Kreppein.

Q. So that when you picked it up or he picked it up, this two-by-four at that time, before going down to 2-E, before seeing any transaction of any nature, you had all intended to gain entrance? A. Yes.

Q. And, of course, if the evidence presented itself, to effect an arrest? A. Yes.

(127-128R)

Q. Prior to December 18, 1962, about one o'clock, you never heard the name of Henry Watson mentioned by anyone, did you? A. That is correct.

Q. And prior to December 18th at one o'clock you never saw Henry Watson? A. That is correct.

Appendix B—Excerpts from Testimony

EDWARD HEER, called as a witness on behalf of the government, being first duly sworn, testified as follows:

Cross Examination by Mr. Stone:

(154R)

Q. Before you arrested this defendant had you ever seen him before? A. No, sir, I hadn't.

Q. And you never heard anybody before one o'clock in the morning on December 18th mention the name of Henry Watson, did you? A. No, sir.

(158R)

The Court: Any further witnesses?

Mr. Jacobs. I have no further witnesses. The government at this time rests.

(159R)

Mr. Stone: I have two objections, one to move to exclude the admission of this evidence. The government never offered these exhibits in evidence during their case and once rested, concluded their case, and any further admission of the evidence after the conclusion of the government case would put the defendants in the position of double jeopardy.

The Court: I deny that motion. I am admitting them nunc pro tunc. I think Mr. Jacobs was asleep when he didn't offer them.

Mr. Jacobs: That is correct.

(162R)

Mr. Stone: Your Honor, I have one additional application at this time.

Pursuant to Rule 14 of the Federal Rules of Crim-

inal Procedure, I move for a severance in this case as to the defendant Watson.

The Court: The motion is denied; exception.

ROBERT WILLIAMS, JR., one of the defendants herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination by Mr. Stone:

(307R)

Q. Prior to December 17th or the morning of December 18th had you ever seen the defendant Henry Watson before? A. No, I have not.

JOHN F. KREPPEIN, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Gold:

(327R)

Q. Directing your attention to the 17th day of December, 1962, did you have occasion to arrest anyone on that day? A. I did.

Q. Who did you arrest? A. Wilhelmina Adams.

Q. Wilhelmina Adams? A. Yes, sir.

Q. Now, after this person was arrested, was she taken down to the office of the United States Attorney? A. She was.

Q. And was she questioned there? A. She was.

Q. Who conducted the questioning? A. Mr. Quinlan did.

(329R)

Q. And who did she say it was? A. She stated to me that her source of supply was Chocolate Williams.

Q. Now, did she tell you when the last time she had purchased from this individual was? A. She stated it was approximately a week prior to the questioning in the office.

Q. That would be approximately December 10, 1962? A. That is right, yes, sir.

(346R)

COLLOQUY

A.—And he said, "I only know him as Ray."

And I said, "All right, what does he look like?"

He told me that he's medium height, medium brown complexion—there's some question in my mind as to whether he said moon-face or round-faced individual—and that he had a heavy build.

(347R)

Q. Now, subsequent to the time that you had entered the apartment, was there anyone else who entered the apartment? A. Yes, sir, there was quite a few people.

Q. Approximately how many? A. I would say a dozen.

Q. And were all these persons kept in the apartment? A. Yes, sir, they were.

(348R)

COLLOQUY

A.—I saw Agent Heer reach out of the apartment, and so I went to see if he needed any help, and when I got outside I saw that he had Watson by the arm—I believe it

would probably be his right arm; I can't be absolutely sure, but he had one arm and his shoulder, and he was steering him back into the apartment.

Cross Examination by Mr. Stone:

(361R)

Q. How long were you in the apartment? A. In the apartment itself? We entered approximately eleven and I think it was approximately two when we left.

Q. Did anybody give you permission to come into the apartment? A. No, sir.

Q. Did anybody give you permission to remain in the apartment? A. No, sir.

(363R)

Q. So until you opened the door of that apartment you had no idea that Robert Williams was in that apartment, did you? A. No, we did not.

Q. And twenty people could have been in that apartment for all you knew; is that correct? A. That's correct.

Q. Or thirty people? A. Correct.

(365R)

Q. Did you and the other agents have a conversation before that door bell rang? A. A while before, yes.

Q. Concerning the fact that if that door bell rang what you would do? A. That is correct.

Q. And you agreed that when that door bell rang you would arrest the person who rang the door bell; is that right? A. No, it is not right.

Q. What did you intend to do? A. When the man fitted the description that Williams supplied rang the door bell, we would place him under arrest.

(368R)

Q. Now, when you say your fellow agent's hands reach out and grab Watson, where was your fellow agent standing? A. He was standing at the—just within the door.

Q. You were inside the apartment of Williams at that time; is that correct? A. That's correct.

Q. And Williams never gave you permission to remain in his apartment, did he? A. No, he did not.

(375R)

Q. Did Robert Williams ever supply you with any information prior to this date? A. Prior to the 17th of December, no.

Q. Did Wilhelmina Adams ever supply you with any information prior to the 17th of December? A. No.

Ernest A. Haridopolos, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Cross Examination by Mr. Lenefsky:

(392R)

Q. Did you know Wilhelmina Adams prior to that date? A. No, sir.

Q. To your knowledge, had she been working with any of the agents prior to that time? A. I don't know, sir.

Q. And was she addicted?

Mr. Gold: Objection, your Honor.

The Court: Perhaps he knows; overruled.

Q. Was she addicted? A. Yes, sir.

(401R)

Q. At any rate, did you believe, did you think that Wilhelmina Adams was worthy of belief, knowing that she was an addict?

Mr. Gold: Objection.

The Court: Overruled.

A. We checked everything.

(402R)

Q. And Agent Kreppein crouched down underneath the door? A. In front of 2-E; yes.

Q. In front of 2-E? A. Yes.

Q. And at that time did you have the intent to arrest a person you thought was Robert Williams? A. Yes, sir.

(407R)

Q. And he was arrested simply because of what Robert Williams said; is that correct?

Mr. Gold: Objection.

The Court: Overruled.

A. Yes, sir.

By Mr. Lenefsky:

(408R)

Q. Where the premises searched before or after Robert Williams was arrested? A. Excuse me?

Q. Were the premises searched before or after Robert Williams was arrested? A. After he was arrested.

Q. And before you arrested him you didn't know he was in that apartment? A. We just knew that he lived there.

Q. But you didn't know that he was actually there? A. That's right.

EDWARD F. HEER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Cross Examination by Mr. Lenefsky:

(440R)

Q. And this was after you were outside the apartment door; is that correct? A. No, sir; I was still inside.

Appendix B

Excerpts of Memorandum of Law Written by Martin R. Gold

(497R)

Williams identified his source as a man known to him as "Ray", and described him as a man of medium height, heavy build, medium brown complexion and either "moon-faced or round-faced."

Excerpts from Opinion of Honorable Thomas F. Croake, U.S.D.J., Filed July 8, 1963

(521R)

He stated that his source of supply was a moonfaced Negro of heavy build, medium height and medium brown complexion, who was expected to arrive in about an hour with a quantity of drugs.

(524R)

Before Williams opened the door the agents did not know whether he was in the apartment. If the agents had probable cause to arrest Williams, it was not until that instant. Even after seeing Williams at the door, Agent Kreppein had no way of knowing whether anyone else was in the apartment with Williams, other than the suspected customer who had not yet left. Thus, the agents did not know whether it was William or others who were receiving the customers.

(525R)

The Court, therefore, holds that Agent Kreppein had, the instant the door was opened, "probable cause" to arrest Williams for the violation of the narcotics laws.

Appendix B—Excerpts from Opinion of Honorable Thomas F. Croake, U.S.D.J., Filed July 8, 1963

(527-528R)

Were it not for the *Rabinowitz* case, this court would be compelled to hold that the search of the Williams premises was unlawful, particularly in view of the decision of the Supreme Court in *McDonald* v. *United States*, 335 U.S. 451 (1948) which is indistinguishable from the case at bar.

(531R)

In accordance with the *Ker* case, this court holds that the constitutional rights of the defendant Williams were not violated by the seizure of narcotics in his apartment on the evening of September 17, 1962.

(534R)

Unlike the informer in the case of *Wong Sun* v *United States*, 371 U.S. 471 (1963) (preliminary print No. 3), Williams had confessed and was obviously attempting to curry favor with his captors.